

NOTICE

*Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LINA GARRISON,	)	
	)	
Appellant,	)	Court of Appeals No. A-10366
	)	Trial Court No. 1JU-08-492 CR
v.	)	
	)	
STATE OF ALASKA,	)	<u>MEMORANDUM OPINION</u>
	)	
Appellee.	)	<u>AND JUDGMENT</u>
_____	)	No. 5578 — March 17, 2010

Appeal from the District Court, First Judicial District, Juneau,  
Keith B. Levy, Judge.

Appearances: David Reineke, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Jack Schmidt, Assistant District Attorney, Douglas D. Gardner,  
District Attorney, and Daniel S. Sullivan, Attorney General,  
Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger,  
Judges.

COATS, Chief Judge.

Lina Garrison was convicted of violating the conditions of her release.<sup>1</sup> At her trial on that charge, two officers testified that they observed Garrison exhibit multiple signs of intoxication at a time when Garrison's conditions of release in a felony driving under the influence case prohibited her from consuming any alcohol.

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<sup>1</sup> AS 11.56.757(b)(1).

Garrison argues that the testimony of the two officers was insufficient to support the jury's verdict. As Garrison acknowledges, the Alaska Supreme Court has held that police officers can offer lay opinion testimony on the issue of intoxication as long as the opinions are rationally based on the officers' perceptions.<sup>2</sup> She argues that in her case the officers observed her too briefly and from too great a distance for a reasonable jury to find based on their testimony that she consumed alcohol.

To determine whether evidence is sufficient to support a jury's verdict, this court views the evidence and the inferences to be drawn from the evidence in the light most favorable to upholding the verdict.<sup>3</sup> The question is whether a fair-minded juror exercising reasonable judgment could conclude that the State met its burden of proving guilt beyond a reasonable doubt.<sup>4</sup> In this evaluation, "the weight and credibility of evidence are matters for the jury to consider in reaching a verdict, not for the reviewing court to decide in ruling on the legal sufficiency of the evidence."<sup>5</sup>

Viewing the evidence in the light most favorable to the jury's verdict, Juneau Police Officer Sarah Hieb had contact with Garrison for at least five to ten minutes before Juneau Police Sergeant Warren Bates arrived. Sergeant Bates was on the scene for an additional ten minutes, and during that time he spoke with Garrison briefly. Both officers had training and experience in detecting intoxication, and Sergeant Bates had previously interacted with Garrison when she was not intoxicated. Based on their observations that

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<sup>2</sup> See *Loof v. Sanders*, 686 P.2d 1205, 1213 (Alaska 1984).

<sup>3</sup> *Shafer v. State*, 456 P.2d 466, 469 (Alaska 1969).

<sup>4</sup> *Collins v. State*, 977 P.2d 741, 747 (Alaska App. 1999).

<sup>5</sup> *Ratliff v. State*, 798 P.2d 1288, 1291 (Alaska App. 1990), *disagreed with on other grounds by Jeffries v. State*, 169 P.3d 913, 921 & n.47 (Alaska 2007).

Garrison was argumentative and had red, watery eyes, slurred speech, and slow and deliberate movements, both officers concluded that Garrison was intoxicated.

Garrison points out that she was sitting in the passenger seat and that the officers observed her from the driver's side of the pickup. She also notes that neither officer was able to testify that the general odor of alcohol in the vehicle emanated from her. But as just explained, both officers testified that they observed multiple, specific signs that Garrison was intoxicated. Garrison has offered no evidence to show that it was not possible for the officers to make those observations from the driver's side of the vehicle.

Garrison also complains that the State failed to corroborate the officers' observations with the results of field sobriety tests or other evidence. But the State's burden was to prove that Garrison had consumed alcohol in violation of her conditions of release; it did not have to prove that she had consumed too much alcohol to legally drive. A fair-minded juror could find based on the testimony of the two officers that Garrison had consumed some alcohol and that Garrison's testimony to the contrary was not credible. We therefore conclude that there was sufficient evidence to support the jury's verdict.

### *Conclusion*

Garrison's conviction is AFFIRMED.